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No. 81-1859

In the Supreme Court of the United States

OCTOBER TERM, 1981

PEOPLE OF THE STATE OF ILLINOIS,
PETITIONER,

v.

RALPH LAFAYETTE,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS THIRD JUDICIAL DISTRICT

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QUESTION PRESENTED FOR REVIEW

Whether a purse may be validly searched as part of a normal booking procedure or as a delayed search incident to arrest.

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PEOPLE OF THE STATE OF ILLINOIS,
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v.

RALPH LAFAYETTE,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS THIRD JUDICIAL DISTRICT

OPINION BELOW

The opinion of the Appellate Court of Illinois, Third Judicial District, as to which review is being sought, is reported at 99 Ill. App. 3d 830, 425 N.E.2d 1383 (3d Dist. 1981). (See Appendix A) The order of the Illinois Supreme Court denying leave to appeal is not reported, but is attached hereto. (See Appendix B)

JURISDICTION

The opinion of the Appellate Court of Illinois, Third Judicial District, was filed on September 10, 1981. (See Appendix A) A timely petition for leave to appeal was filed by the

petitioner in the Illinois Supreme Court. The order of the Illinois Supreme Court denying the petition for leave to appeal was entered on February 2, 1982. (See Appendix B)

This Court's jurisdiction is invoked under 28 U.S.C. §1257(3). The instant Petition for Writ of Certiorari is being filed within 60 days of the Illinois Supreme Court's order denying leave to appeal.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment IV:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution, Amendment XIV:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The respondent in this case was arrested for disorderly conduct. Subsequently, he was transported to the police station and his purse was searched. Prior to trial the respondent filed a motion to suppress evidence allegedly illegally seized from him.

The respondent testified in his own behalf as the first witness at the hearing on the motion to suppress. He testified that on September 1, 1980, at approximately 10 p.m., he was at the Town Cinema in Kankakee, Illinois. At that time, he had a purse with a shoulder strap. He further testified that he was arrested by Sergeant Mietzner and taken to the city jail. When they arrived at the jail, Sergeant Mietzner directed the respondent to take everything out of his pockets. Sergeant Mietzner then removed the respondent's purse from his shoulder and examined its contents. Sergeant Mietzner did not have a warrant authorizing the search of the purse and the respondent did not consent to the search. The respondent considered the purse to be private. Sergeant Mietzner removed some pills from the purse.

On cross-examination, the respondent stated that he was arrested for disturbing the peace. He agreed that his purse was searched during the booking procedure.

Following the respondent's testimony, the defense rested and Sergeant Mietzner testified as a witness for the People. Sergeant Mietzner testified that on September 1, 1980, at approximately 10 p.m., he was called to the Town Cinema by the theater manager. When he arrived at the theater, he found the respondent arguing with the manager. Sergeant Mietzner subsequently arrested the respondent for disturbing the peace. The respondent had a purse with a shoulder strap. The respondent was handcuffed and transported to the police station.

At the police station the respondent was unhandcuffed. In the booking room the respondent was directed to remove everything from his pockets and place any items on the counter. The respondent complied with this order. The respondent also removed a partially empty package of cigarettes from his purse and placed his purse on the counter. Sergeant Mietzner patted the purse and felt something else inside. Sergeant Mietzner then looked inside and found ten pills wrapped in a cigarette case package. A Valtox test was performed on the pills and they were found to contain amphetamines. The pills were found during the booking procedure in a search conducted as part of the normal police procedure.

On cross-examination, Sergeant Mietzner agreed that he did not fear for his safety when he arrested the respondent and that he did not expect to find a gun in the respondent's purse. Sergeant Mietzner also stated that the purse was small and that he could have placed it in a bag and sealed the bag. There was also a locker at the police station that he could have locked the respondent's belongings in. The respondent was present when Sergeant Mietzner looked inside the purse.

In response to the trial judge's questioning, Sergeant Mietzner stated that the respondent was getting undressed before entering his cell when his purse was searched. Sergeant Mietzner also testified that when he arrests a woman he examines the contents of her purse as part of the routine booking procedure.

The trial court granted the respondent's motion to suppress. The Illinois Appellate Court affirmed the trial court's suppression order.

The Appellate Court held that the State waived the argument that the search was a valid search incident to arrest by failing to raise the argument in the trial court. However, the

court went on to state that under this Court's opinion in *United States v. Chadwick,* the search was proper since the purse was a closed container in which respondent had an expectation of privacy independent of that of his body and clothing. The court further held that this Court's opinion in *South Dakota v. Opperman,* governing inventory searches, was not controlling in the case at bar since the respondent's privacy interest in his purse outweighed the State's need to conduct an inventory search. (See Appendix A)

The petitioner herein, the People of the State of Illinois, sought leave to appeal the decision of the Illinois Appellate Court in the Illinois Supreme Court, but leave was denied. (See Appendix B)

REASON FOR GRANTING THE PETITION FOR WRIT OF CERTIORARI

THE DECISION OF THE ILLINOIS APPELLATE COURT, IN CONTRAVENTION TO THIS COURT'S OPINIONS, HAS SUBSTANTIALLY LIMITED A POLICE OFFICER'S RIGHT TO SEARCH A DEFENDANT INCIDENT TO ARREST AND TO CONDUCT A ROUTINE INVENTORY SEARCH DURING NORMAL BOOKING PROCEDURES.

The People argued on appeal that the search of the respondent's purse was proper as a delayed search incident to arrest and as a routine inventory search conducted during the booking of the respondent. The People relied upon the rationale expressed in this Court's decisions in *United States v. Robinson,* 414 U.S. 218 (1973); *United States v. Edwards,* 415 U.S. 800 (1974); *South Dakota v. Opperman,* 428 U.S. 364 (1976), and in

subsequent decisions of other state and federal courts applying the rationale of these cases to factual situations analogous to the case at bar.

Although the Illinois Appellate Court recognized that other state and federal courts had approved searches of defendants' purses in analogous situations, the court concluded that the instant search was improper because the respondent's expectation of privacy in his purse outweighed any right of the State to search his purse. In reaching its decision, the court placed great reliance on this Court's decision in *United States v. Chadwick,* 433 U.S. 1 (1977).

Petitioner maintains that the Appellate Court has read *Chadwick* too broadly. In *Chadwick,* this Court held that the police station search of a defendant's *locked* footlocker, which was found next to the defendant, could not be justified as a delayed search incident to arrest. The Appellate Court, in the instant case, incorrectly determined that the purse carried by the respondent was analogous to the footlocker in *Chadwick.* Obviously, a purse is much more intimately associated with the person than is a footlocker. If it is improper to search the respondent's purse, it is probably also improper to search a defendant's pockets and wallet incident to arrest. The absurd result would be that a defendant could only be subjected to a pat-down search incident to a custodial arrest. Thus, public policy reasons exist for allowing the search of a purse which did not exist in *Chadwick.*

Petitioner further maintains that the Illinois Appellate Court has ignored the right of the police to search a defendant incident to arrest. In *United States v. Robinson,* 414 U.S. 218 (1973), this Court held:

> [T]hat in the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment,

> but is also a "reasonable" search under that Amendment.

414 U.S. at 235.

Furthermore, in *United States v. Edwards,* 415 U.S. 800 (1974), this Court stated:

> [T]hat searches and seizures that could be made on the spot at the time of arrest may legally be conducted later when the accused arrives at the place of detention.

415 U.S. at 803.

Several state and federal courts have interpreted these decisions to mean that when a defendant is arrested and taken to a police station, it is proper to search a wallet or purse at the station as a search incident to arrest. *United States v. Passaro,* 624 F.2d 938 (9th Cir. 1980); *United States v. Avila-Dominguez,* 610 F.2d 1266 (5th Cir. 1980); *United States v. Phillips,* 607 F.2d 808 (8th Cir. 1979); *State v. Sabater,* 3 Kan. App. 2d 692, 601 P.2d 11 (Kan. App. 1979); *Dawson v. State,* 40 Md. App. 640, 395 A.2d 160 (1978); *But see People v. Helm,* ____ Ill. 2d ____, ____ N.E.2d ____ (No. 54507, December 18, 1981). (See Appendix C).

Similarly, in the case at bar, when the respondent was arrested he had his purse over his shoulder. When he arrived at the police station, Sergeant Mietzner properly examined the contents of the purse as a delayed search incident to arrest. Thus, the search of the purse was proper.

Finally, petitioner maintains that the search was proper as an inventory search conducted during normal booking procedures. It is uncontested that the respondent's arrest was proper and that the contents of his purse were examined as part of a routine inventory conducted during normal booking procedures.

The policy reasons for upholding inventory searches conducted pursuant to routine police procedures were outlined by this Court in *South Dakota v. Opperman,* 428 U.S. 364 (1976), as follows:

> [T]he protection of the owner's property while it remains in police custody [citation omitted]; the protection [of] the police against claims or disputes over lost or stolen property [citation omitted]; and the protection of the police from potential danger [citation omitted].

428 U.S. at 369.

Although the petitioner recognizes that a distinction exists between inventorying the contents of an automobile, as in *Opperman,* and in inventorying the contents of a purse, the petitioner contends that the same policy reasons for allowing an inventory exist. Several other courts have upheld searches of defendants' purses during routine booking procedures at a police station. *United States v. Venizelos,* 495 F. Supp. 1277 (S.D. N.Y. 1980); *People v. Maher,* 130 Cal. Rptr. 508, 550 P.2d 1044 (1976); *People v. Harris,* 105 Cal. App. 3d 204, 164 Cal. Rptr. 296 (1st Dist. 1980).

In the case at bar, if the respondent had any money or valuables, he would probably have carried them in his purse. As in *Opperman,* the police officers had a right to know what they were safeguarding and the respondent had a right to have his property safely kept. Otherwise, the police officers might not have taken sufficient steps to properly safeguard the respondent's property or the respondent might have falsely claimed that his property was lost or stolen. Obviously, a routine inventory of the respondent's personal property during the booking procedure was necessary for the protection of both the police officers and the respondent.

Thus, the search of the respondent's purse was proper. The Illinois Appellate Court incorrectly determined that the search of the purse at the police station was not justified as either a delayed search incident to arrest or as an inventory search. The court's decision is directly contrary to the conclusions reached by several state and federal courts. Its conclusion is also contrary to this Court's holdings in *Edwards, Robinson,* and *Opperman.* To allow such a decision to stand as a matter of federal constitutional law will severely limit the scope of searches conducted incident to arrest under *Robinson* as well as the continued use of inventory searches under *Opperman.*

CONCLUSION

For the foregoing reasons, petitioner prays that this Court grant the instant Petition for Writ of Certiorari and, upon review, reverse the decisions of the Illinois courts in this case.

Respectfully submitted,

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April 3, 1982.

No. 81-99

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 1981

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, vs RALPH LAFAYETTE, Defendant-Appellee.	Appeal from the Circuit Court of the Twelfth Judicial Circuit Kankakee County, Illinois Honorable John F. Michela Presiding Judge

Mr. JUSTICE HEIPLE delivered the opinion of the court.

The State appeals from the order of the Circuit Court of Kankakee County which suppressed evidence seized. The issue presented is whether a warrantless search of the defendant's (Ralph Lafayette) shoulder bag, made during booking procedures following a valid custodial arrest, was unreasonable and, thus violated the defendant's fourth and fourteenth amendment rights.

The defendant had been charged with possession of a controlled substance in violation of section 1402(b) of the Controlled Substances Act. (Ill. Rev. Stat. 1979, ch. 56½, par.

1402(b).) Prior to trial, he moved to suppress ten amphetamine pills found in his purse-like shoulder bag subsequent to his arrest for disturbing the peace. The testimony adduced at the suppression hearing established the following facts:

On September 1, 1980, at approximately 10 p.m., Officer Maurice Mietzner responded to a call about a disturbance at the Town Cinema in Kankakee. When Mietzner arrived, the defendant was arguing with the theater manager. The manager said he wanted to sign a complaint against the defendant for disturbing the peace. According to Mietzner, the defendant continued to yell and scream in the theater, so the officer arrested him for disturbance of the peace. Although the defendant wore a shoulder bag, Mietzner did not remove it. Nor did he "pat down" the defendant for weapons or contraband. Instead, Mietzner handcuffed the defendant and transported him by car to the police station.

In the booking room, the handcuffs were released, and the defendant was ordered to remove any items from his pockets and place them on the counter. The defendant did as ordered. According to Mietzner's testimony, the defendant then reached into his shoulder bag, withdrew a package of cigarettes, and placed the bag on the counter where it was searched. The defendant testified that the police removed the bag from his shoulder and searched it. After "patting down" the bag, Mietzner looked inside a cigarette case package and found ten pills later identified as containing amphetamines. Mietzner stated he was not in fear for his safety when he made the arrest, nor did he expect to find a gun or drugs upon searching the shoulder bag. He searched the bag because "everything" had to inventoried, according to standard police procedure. Mietzner also admitted the defendant's shoulder bag was small enough to be placed and sealed in a larger bag or box for protective purposes.

At the close of the hearing, the prosecution argued the seizure was made incident to a valid inventory search. After taking the matter under advisement, the circuit court summarily suppressed the evidence seized. On appeal, the State advances two grounds for justifying the warrantless search of the shoulder bag at the stationhouse following the defendant's arrest: the search was incident to a lawful custodial arrest, and the search constituted a valid inventorying of the defendant's personal effects upon his arrest. Neither party disputes the lawfulness of the defendant's custodial arrest for disturbance of the peace.

With respect to the State's first argument, that the warrantless search was reasonable because it was incident to a valid custodial arrest, we find the State has waived this argument for the purposes of appeal by failing to raise it at the suppression hearing. (See, *People v. Fuentes* (3rd Dist., 1980), 91 Ill. App. 3d 71, 414 N.E.2d 876.) Moreover, even assuming, *arguendo,* that the State has not waived this argument, the stationhouse search of the shoulder bag did not constitute a valid search incident to a lawful arrest.

A search incident to arrest, if lawful at the time of the arrest, may be conducted later when the accused arrives at the place of detention. (*United States v. Edwards* (1974), 415 U.S. 800, 94 S. Ct. 1234, 39 L. Ed. 2d 771.) However, the Supreme Court in *United States v. Chadwick* (1977), 433 U.S. 1, 97 S. Ct. 2476, 53 L. Ed. 2d 538, appeared to have limited the option of postponing a search incident to arrest by sanctioning only delayed searches of the accused and his clothing. In *Chadwick,* the Court faced the issue of whether a search of a locked footlocker found adjacent to the lawfully arrested defendants could be searched later at the stationhouse without a warrant. The Court rejected the government's argument that the *Edwards* rule applied equally to items within the accused's possession and declared that "warrantless searches of luggage

or other properties seized at the time of the arrest cannot be justified as incident to that arrest either if the 'search is remote in time or place from the arrest' (*Preston v. United States* (1964), 376 U.S. 364, 367, 84 S. Ct. 881, 884, 11 L. Ed. 2d 777, 780), or no exigency exists." (*United States v. Chadwick* (1977), 433 U.S. 1, 15, 97 S. Ct. 2476, 2485, 53 L. Ed. 2d 538, 550-51.) The justification for the distinction announced in *Chadwick* is that, unlike an accused's person who suffers a substantial diminution in his expectations of privacy once placed under arrest (see, *United States v. Robinson* (1973), 414 U.S. 218, 94 S. Ct. 467, 38 L. Ed. 2d 427), possessions within the immediate control of the accused retain their expectations of privacy after arrest. Further, once the officers gain exclusive control of the luggage or personal property not immediately associated with the arrestee, there is no danger that the arrestee might gain access to the property to destroy evidence or to become armed. As Chief Justice Burger and Justice Powell indicated in their concurring opinion in *Arkansas v. Sanders* (1979), 442 U.S. 753, 99 S. Ct. 2586, 61 L. ed. 2d 235, the *Chadwick* rule applies equally to closed containers carried in the hand of the accused. Subsequent case law has demonstrated that the *Chadwick* rule does not depend on whether the container is locked, but whether, judging from the totality of the circumstances, the accused has a reasonable expectation of privacy. See, e.g., *Arkansas v. Sanders,* (1979), 442 U.S. 753, 99 S. Ct. 2586, 61 L. Ed. 2d 235 (unlocked suitcase); *Robbins v. California* (1981) (29 Crim L. Rep. 3115), ____ U.S. ____, ____ S. Ct. ____, ____ L. Ed. 2d ____ (closed opaque plastic bag); *United States v. Rigales* (5th Cir. 1980), 630 F. 2d 364 (closed backpack); and *United States v. Berry* (7th Cir. 1977), 560 F. 2d 861 (unlocked briefcase).

In applying these principles to the facts presented here, we find the postponed warrantless search of the defendant's shoulder bag to be unreasonable because the purse-like

shoulder bag does carry an expectation of privacy independent of that of the arrestee's body and clothing. Although we recognize several jurisdictions have held otherwise (see, *United States v. Moreno* (9th Cir. 1978), 569 F.2d 1049; *Sumlin v. State* (1979), ____ Ark. ____, 587 S.W.2d 571; *Dawson v. State* (1978), 40 Md. App. 640, 395 A.2d 160; *State v. Horton* (1979), 44 N.C. App. 343, 260 S.E.2d 780), we agree with *People v. Redmond* (1st Dist., 1979), 73 Ill. App. 3d 160, 390 N.E.2d 1364, which declared a warrantless search of the defendant's purse following his arrest to be unreasonable. After the accused has been secured, as in the case at bar, and the officer has no fear that the purse is a refuge for a weapon or other contraband, the contents of a closed purse, which are generally of a personal nature and subject to expectations of privacy, may not be searched and seized without exigent circumstances or warrant. Accordingly, because the shoulder bag was in the officer's exclusive possession and because no exigent circumstances existed, the search was not incident to the defendant's arrest.

The State also argues the warrantless search of the defendant's shoulder bag constituted a valid inventorying of its contents according to *South Dakota v. Opperman* (1976), 428 U.S. 364, 96 S. Ct. 3092, 49 L. Ed. 2d 1000. In *Opperman* the Court upheld the inventory search of the contents of an unlocked glove compartment in a lawfully impounded vehicle. Such an intrusion into the vehicle was deemed reasonable because it furthered three legitimate objectives: protection of the owner's property; protection of the police against claims of lost or stolen property; and protection of the police from potentially dangerous contraband. The reasonableness of the inventory search has not been considered by the Supreme Court outside of the circumstances found in *Opperman*. However, the Illinois Supreme Court in *People v. Bayles* (1980), 82 Ill. 2d 128, 411 N.E.2d 1346, refused to

countenance an inventory search of an unlocked suitcase found in the defendant's possession at the time of his arrest and limited the *Opperman* holding to inventory searches of lawfully impounded vehicles. The *Bayles* court, after examining the legitimate objectives for upholding inventory searches offered in *Opperman* in light of the considerably greater privacy interests found in closed personal containers than in vehicles (see, *United States v. Chadwick* (1977), 433 U.S. 1, 97 S. Ct. 2476, 53 L. Ed. 2d 538), declared inventorying the contents of a suitcase found in a lawfully impounded vehicle to be, in the absence of exigent circumstances, unreasonable and a violation of the fourth amendment.

Clearly, the instant circumstances presented here, are closer to *Bayles* than to *Opperman*. As we have previously said, the contents of the defendant's purse-like shoulder bag are vested with the same substantial privacy interests as are the contents of a locked trunk (*Chadwick*), an unlocked suitcase (*Sanders*), or a briefcase (*Bayles*). In considering the reasonableness of an inventory search, this substantial privacy interest must be balanced against the three objectives stated in *Opperman*. First we see no possibility of potential harm presented by the defendant's purse, for, as contended by Officer Mietzner, he had no fear for his safety at the time of the search. The two other objectives, preservation of the defendant's property and protection of police from claims of lost or stolen property, "could have been achieved in a less intrusive manner." (*People v. Bayles* (1980), 82 Ill. 2d 128, 143, 411 N.E.2d 1346, 1353.) For example, as Officer Mietzner testified, the defendant's shoulder bag could easily have been secured by sealing it within a plastic bag or box and placing it in a secured locker.

Therefore, the postponed warrantless search of the defendant's shoulder bag was neither incident to his lawful arrest nor a valid inventory of his belongings, and thus, violated the fourth amendment.

Accordingly, we affirm the suppression order entered in the Circuit Court of Kankakee County.

Affirmed.

SCOTT, P.J. and ALLOY, J., concur.

[LETTERHEAD OF ILLINOIS SUPREME COURT]

Robert H. Gillespy
Clerk

February 2, 1982

Hon. Tyrone C. Fahner
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No. 55762 — People State of Illinois, petitioner, vs. Ralph Lafayette, respondent. Leave to appeal, Appellate Court, Third District.

You are hereby notified that the Supreme Court today denied the petition for leave to appeal in the above entitled cause.

Very truly yours,

/s/ Robert H. Gillespy
Clerk of the Supreme Court

Docket No. 54507 — Agenda 24 — September 1981.
THE PEOPLE OF THE STATE OF ILLINOIS, Appellant,
v. CINDY HELM, Appellee.

JUSTICE SIMON delivered the opinion of the court:

Decatur police arrested the defendant, Cindy Helm, at her home at 3 a.m. on a battery charge filed by her ex-husband. He claimed she had hit him in the eye with her fist. The defendant was in bed when police arrived, and when told that she would have to go to the station, Helm dressed, picked up her purse, and accompanied the officers to the station. There, a female desk clerk took her purse and searched it. The clerk, who was not a police officer, found three small diet pills in Helm's coin pouch, which was inside the purse. The defendant was not personally searched, either at her home or at the station, until after her purse was searched. Later lab tests showed that the pills were amphetamines, and Helm was charged with felony possession of a controlled substance. (Ill. Rev. Stat. 1979, ch. 56½, par. 1402(b)). The circuit court of Macon County granted her motion to suppress the pills. The appellate court, in an unpublished order (73 Ill. 2d R.23), affirmed (89 Ill. App. 3d 1206), and this court granted leave to appeal under Rule 315 (73 Ill. 2d R.315).

The search of the defendant's purse was made without a warrant and so was banned by both the fourth amendment to the Federal Constitution and section 6 of the Illinois bill of rights (Ill. Const. 1970, art. 1, sec. 6) unless it was both reasonable and within one of the exceptions to the warrant requirement. *Arkansas v. Sanders* (1979), 442 U.S. 753, 759-60, 61 L. Ed. 2d 235, 242, 99 S. Ct. 2586, 2590-91.

Helm did not consent to the search. (*Cf. People v. Nunn* (1973), 55 Ill. 2d 344, 347.) And, her purse was not being searched under the authority of the "stop and frisk" statute

(Ill. Rev. Stat. 1979, ch. 38, par. 108-1.01), for the arresting officers could not reasonably have suspected by the time they reached the station that they were in danger of attack from Helm.

Nor were the terms of section 108-1 of the Code of Criminal Procedure of 1963 (Ill. Rev. Stat. 1979, ch. 38, par. 108-1) for a search incident to an arrest fulfilled. The purse was not searched to protect the officers from attack, for if that were in fact the rationale, the officers would not have waited to search Helm until after arriving at the police station. They would instead have searched her on the spot of the arrest or would have patted her down in a weapons frisk upon arriving at the station. The purse was not searched to prevent Helm from escaping or passing on its contents to other persons. The purse was being taken away from her and its contents would never go with her into the jail, and so could not be contraband which might fall into the hands of other prisoners or pose a threat to jail security. It was not searched to discover the fruits of Helm's crime — battery, which has no seizable fruits. It was not searched to discover instruments used in the commission of her crime, for she had used only her fist. Because the purse was being taken away from Helm, it was outside the area of immediate control in which a search incident to an arrest is justified. (*Cf. New York v. Belton* (1981), ____ U.S. ____, ____, 69 L. Ed. 2d 768, 776, 101 S. Ct. 2860, 2865; *United States v. Robinson* (1973), 414 U.S. 218, 38 L. Ed. 2d 427, 94 S. Ct. 467.) The pills, secreted in the coin pouch which was inside the purse, were not in "plain view." *Cf. Chimel v. California* (1969), 395 U.S. 752, 23 L. Ed. 2d 685, 89 S. Ct. 2034.

The State seeks to justify the search as an attempt to inventory Helm's possessions incident to a lawful custodial arrest. The normal procedure in the Decatur police station was for the desk clerk to put an arrestee's belongings in a locked strong box under the counter after they were inventoried.

They were kept there until the arrestee was released. A police officer here testified that he had read an inventory slip prepared by the desk clerk pursuant to the search of Helm's purse, but no inventory slip was presented into evidence or appears in the record.

Inventory searches are recognized by statute (Ill. Rev. Stat. 1979, ch. 38, par. 108-2), but are different from other searches exempted from the warrant requirement. The inventory search is not justified by law-enforcement exigencies which threaten the safety of police or make resort to a judge for a warrant impracticable. Instead, an inventory search is made to protect the arrestee's property by putting it in safekeeping while the arrestee is being booked or incarcerated and to insulate the police from later claims by arrestees that their property was stolen or mishandled while in police custody. *People v. Bayles* (1980), 82 Ill. 2d 128; *People v. Hamilton* (1979), 74 Ill. 2d 457, 469.

In *Bayles*, the defendant was trapped under his car after a one-car accident. His luggage was strewn about a nearby field, and a sheriff's deputy inventoried a suitcase and found marijuana. The inventory search was held invalid because the objectives of the inventory could have been achieved in a less intrusive manner. (82 Ill. 2d 128, 143). In *Hamilton,* the defendant had been injured in an automobile accident and was taken to a hospital. The State trooper investigating the accident found the defendant's briefcase on the scene and took it with him to the hospital, where he was going to interview the defendant for his accident report. The defendant was not under arrest. The trooper searched the briefcase while inventorying its contents and found heroin. The drugs were suppressed, the court noting that the purposes of the inventory search could have been served by placing the briefcase in a locked locker or storage room, to protect the defendant's goods, and by sealing it with tape in the presence of a third

party, to guard against later claims of theft. (74 Ill. 2d 457, 471-72.) The court found no reasonable justification for searching the briefcase.

Likewise there was no reasonable justification here. That Helm was under arrest makes no difference; as already noted this was not a search incident to arrest under section 108-1 of the Code of Criminal Procedure of 1963 (Ill. Rev. Stat. 1979, ch. 38, par. 108-1). The police station to which Helm was taken had a locked strongbox which was immediately available for storage to protect her belongings; witnesses (the arresting police officers) were present and could have verified a sealing of the purse by the desk clerk without examination of its contents, as suggested in *Hamilton*. In view of the availability of the strongbox and the minor nature of the charge against Helm, this is the procedure which should have been followed here. Had it been, it would have accomplished everything the inventory of the contents did. One commentator has even pointed out that taking inventory item-by-item does not afford protection against false claims that property was stolen while in police custody.

> "False claims cannot be avoided, and seem more likely when the contents are handled and inventoried (a time when, the owner might later claim, some of his property was taken), as compared to when the container is immediately sealed." 2 W. LaFave, Search and Seizure sec. 5.5, at 360 n.50 (1978).

Under the circumstances presented in this case, the purposes of the inventory could easily have been accomplished in a less intrusive way; having the desk clerk, instead, rummage through Helm's purse was under these circumstances an impermissible search.

Because the warrantless search here did not reasonably fall under an exception to the warrant requirement, the pills were

properly suppressed and the judgment must be affirmed. The conclusion we reach makes it unnecessary to address Helm's contention that the pills were correctly suppressed because she was not informed she had a right to post bail in the amount pre-set for a charge of battery under Rule 528(c) (73 Ill. 2d R. 528(c)). See generally *People v. Seymour* (1979), 80 Ill. App. 3d 221, *rev'd* (1981), 84 Ill. 2d 24.

Judgment affirmed.

JUSTICE WARD, dissenting:

I must dissent from the majority's holding, which I consider shows a misunderstanding of the important question involved here and which unrealistically interferes with booking procedures for persons under custodial arrest at police stations. The majority, in holding the drugs in the purse to have been illegally seized, says that a station inventory could be accomplished in a less intrusive way. That statement gratuitously and erroneously assumes that the search of the purse here was not to be considered as a part of the search of the person and of the inventory process. Too, our inquiry should be whether inventorying the contents of the purse was unreasonable as a matter of law and therefore unconstitutional. The question is not whether a search could be less intrusive. Talk of less intrusive inventory station searches following arrest has been advanced but not accepted. Professor LaFave in his treatise notes that it has been sometimes suggested that the purposes of an inventory could be accomplished by a less intrusive means, but he states: "Currently, such evidence is admissible, and this is generally so even when the inventory has been most thorough. It is customary for the booking inventory to involve an item-by-item examination of everything in the arrestee's pockets or otherwise on his person, including looking into his wallet or into containers on the person; it may even extend to a strip search." (2 W. LaFave, Search and Seizure sec. 5.3, at 307 (1978).) (I would observe that we, excepting Justice Simon, who did not participate, very recently

held that strip searches at the police station may be reasonable. Following holdings of the Supreme Court, we held that a full search of a person incident to a lawful custodial search may be made without a warrant and that it may be made even if there is not probable cause to believe that the suspect may have a weapon or destroy evidence. *People v. Seymour* (1981), 84 Ill. 2d 24.)

If we were interested only in reducing the intrusiveness of inventory searches, while barring weapons and contraband from the interior of the jail, the practice of having persons under arrest empty pockets, turn over wallets and the like for purposes of inventory could be abolished. Instead pants, coats and other clothing and property could be sealed in garment bags and jail clothing provided. Pockets and wallets may contain possessions that are as private in character as possessions found in purses. The absurdity, however, of such a procedure is reflected in the practical comment of the court in *People v. Walker* (1975), 58 Mich. App. 519, 525, 228 N.W.2d 443, 446: "It would be naive and pointless to assume that law enforcement officials may store an arrestee's personal effects without first determining what it is they are inventorying."

I suspect that police and other law-enforcement officers will judge that the majority's holding discloses an innocence of situations that police encounter on an everyday basis. The court in *United States v. Berry* (7th Cir. 1977), 560 F.2d 861, 864, made the common sense observation that a purse "might be characterized as 'immediately associated with the person of the arrestee'***." Who is able to say what a purse of one under arrest may contain? "Growing Up Underground," an autobiographical reminiscence of Jane Alpert, who was described as a woman radical of the 1960's, was reviewed in December 1981 in a Chicago newspaper. A portion of the review reads: "Several weeks later, as Alpert transported a purse full of dynamite to the New York City Federal Building,

she felt, 'as I imagined I would on my wedding day.'" In October 1981, in New York, a gun battle followed a robbery attempt on an armored truck. Two police officers and a security guard were murdered. Two women members of the so-called radical underground were among those arrested at the time. The public and police would be astonished to find that the search of the women's purses incident to their arrest or when making an inventory at their booking at the police station might be held an unreasonable search and any evidence seized declared to be inadmissible.

The Supreme Court has made it clear that a full search of a person is authorized upon a custodial arrest. In *United States v. Robinson* (1973), 414 U.S. 218, 235, 38 L. Ed. 2d 427, 440-41, 94 S. Ct. 467, 477, the court stated: "A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification. It is the fact of the lawful arrest which establishes the authority to search, and we hold that in the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a 'reasonable' search under that Amendment." In *United States v. Edwards* (1974), 415 U.S. 800, 803, 39 L. Ed. 2d 771, 775, 94 S. Ct. 1234, 1237, the court said that "searches and seizures that could be made on the spot at the time of arrest may legally be conducted later *** at the place of detention." (See also 2 W. LaFave, Search and Seizure sec. 5.3 (1978).) When the arrested person has been taken to the place of the detention, there may be a search of his person without warrant, and no justification for the individual search is necessary other than that the person was lawfully arrested and is being lawfully detained. Such searches are conducted as searches incident to the arrest, as the taking of an inventory to protect the property of the arrestee, to insure the security of the place of detention and its occupants, and to protect police

officers from false claims of appropriating property of the arrestee. (See 2 W. LaFave, Search and Seizure sec. 5.3 (1978).) A purse may be searched in the course of a search under authority of *Robinson and Edwards*. The court in *United States v. Berry* (7th Cir. 1977), 560 F.2d 861, 864, noted that a purse "might be characterized as 'immediately associated with the person of the arrestee' because it is carried with a person at all times." *United States v. Chadwick* (1977), 433 U.S. 1, 53 L. Ed. 2d 538, 97 S. Ct. 2476, does not restrict the force of *Robinson* and *Edwards* here. There it was held that the opening of a footlocker following the arrest of the defendants without a search warrant was improper. The court said, "Once law enforcement officers have reduced luggage or other personal property *not immediately associated with the person* of the arrestee to their exclusive control*** a search of that property is no longer an incident of the arrest." (Emphasis added.) (433 U.S. 1, 15, 53 L. Ed. 2d 538, 551, 97 S. Ct. 2476, 2485.) As we noted in *United States v. Berry,* it was said in discussing *Chadwick* that a purse may be characterized as being immediately associated with the person of the arrestee. A footlocker certainly is not immediately associated with the person and unlike a purse is not carried with a person at all times. Too, and importantly, in *Chadwick* the justification claimed for the search was that it was incident to the arrest. Here, the search of the defendant and her purse were part of an inventory process at the police station.

In *State v. Sabater* (1979), 3 Kan. App. 2d 692, 601 P.2d 11, the court held that a woman's pocketbook is immediately associated with the person and the search of the pocketbook and wallet incident to her arrest was a lawful search. The court rejected the defendant's contention that the search was improper under *Chadwick*. The court said: "The custodial arrest of defendant was a seizure of her person. The search of her pocketbook and wallet was lawful. *United States v. Robinson* (1973), 414 U.S. 218, 38 L. Ed. 2d 427, 94 S. Ct. 467. We do

not view defendant's pocketbook to have been a repository of personal property coming within the rule enunciated in *Chadwick* ***. We hold defendant's pocketbook was immediately associated with the person of defendant, the arrestee, and the search of the pocketbook involved no greater reduction in her expectations of privacy than that caused by the arrest itself. Accord, *Dawson v. State,* 40 Md. App. 640, 395 A.2d 160, 164-67 (1978)." (3 Kan. App. 2d 692, 694, 601 P.2d 11, 13-14.) LaFave observes that in *Dawson v. State* the court adopted the reasoning of *United States v. Berry* (7th Cir. 1977), 560 F.2d 861. (2 W. LaFave, Search and Seizure sec. 5.5 (1978).) Other decisions upholding searches of purses even on incident-to-arrest grounds (as opposed to the inventory basis) include *Daigger v. State* (1980), 268 Ark. 249, 595 S.W.2d 653, and *Sumlin v. State* (1979), 266 Ark. 697, 587 S.W.2d 571.

The majority's citation of *People v. Bayles* (1980), 82 Ill. 2d 128, and *People v. Hamilton* (1979), 74 Ill. 2d 457, simply misses the mark. What the appellate court in *People v. Keath* (1981), 101 Ill. App. 3d 652, 660, said of these decisions is particularly applicable here:

> "Suffice to say that search in each case was not associated with searches of the person upon custodial arrest, or incident to booking for purposes of custodial detention. Those cases [*Hamilton, Bayles*] were concerned solely with the inventory of baggage obtained following motor accidents."

In *Keath* the court, after an impressively reasoned discussion of the search question, held that drugs, found in a key case and cellophane bag in the defendant's pockets during a routine inventory search at the jail, where the defendant's property was to be stored in a locker, were admissible in evidence.

Though the record is not revealing in this regard, it is not inappropriate to observe that the case here may be of the sad type in which police are called by a friend or relative for the protection and welfare of the defendant. The defendant's former husband complained to the police that the defendant had struck him with her fist. That the police would go to the defendant's home at three o'clock in the morning and take her into custody would be remarkable if it were not for the purpose of seeking to protect the defendant possibly from the drugs she apparently routinely carried with her.

I respectfully submit that the majority has misapprehended and erred.

UNDERWOOD and MORAN, JJ., join in this dissent.